

EXHIBIT B

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

USA CAPITAL REALTY ADVISORS, LLC

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC

USA CAPITAL FIRST TRUST DEED FUND, LLC,

USA SECURITIES, LLC

Debtors

Affects:
USA Commercial Mortgage Company

Case No.: BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

Chapter 11

Jointly Administered Under Case No.
BK-S-06-10725-LBR

Judge Linda B. Riegler

**DECLARATION OF GEOFFREY
L. BERMAN IN SUPPORT OF
APPLICATION TO
COMPROMISE AND SETTLE
CONTROVERSIES WITH
ANTHONY MONACO, SUSAN K.
MONACO, AND MONACO
DIVERSIFIED CORPORATION.**

Hearing Date:
Hearing Time:

**DECLARATION OF GEOFFREY L. BERMAN IN SUPPORT OF
APPLICATION TO COMPROMISE AND SETTLE CONTROVERSIES AGAINST
ANTHONY MONACO, SUSAN K. MONACO, AND MONACO DIVERSIFIED
CORPORATION IN ADVERSARY NO. 08-01125 PURSUANT TO RULE 9019
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Geoffrey L. Berman, in his capacity as the Court-appointed Trustee of the USACM
Liquidating Trust, declares under penalty of perjury as follows:

1 1. I am an adult person competent to testify in court. I make the following statements
2 based upon my personal knowledge except where otherwise indicated.

3 2. I am the Court-appointed trustee of the USACM Liquidating Trust (the "USACM
4 Trust") pursuant to the order confirming the "Debtors' Third Amended Joint Chapter 11 Plan of
5 Reorganization" (the "Joint Plan") entered on January 8, 2007 in *In re USA Commercial*
6 *Mortgage*, Cause No. BK-S-06-10725 pending in the United States Bankruptcy Court for the
7 District of Nevada (the "Bankruptcy Court"), and submit this declaration in that capacity. The
8 Joint Plan became effective on March 12, 2007 (the "Effective Date").

9
10 3. I submit this declaration in support of the USACM Trust's Application to
11 Compromise and Settle Controversies with Anthony Monaco, Susan K. Monaco, and Monaco
12 Diversified Corporation (the "Motion"). As discussed in the Motion, the USACM Trust seeks
13 Bankruptcy Court approval of the Settlement Agreement¹ between the USACM Trust, on the one
14 hand, and Anthony Monaco, Susan K. Monaco, and Monaco Diversified Corporation
15 (collectively, the "Monaco Defendants") on the other. A copy of the Settlement Agreement is
16 attached hereto as Exhibit 1.

17
18 4. On April 11, 2008, the USACM Trust commenced adversary proceeding number
19 08-01125, entitled *USACM Liquidating Trust v. Eagle Ranch, et al.* (the "Adversary Proceeding")
20 seeking restitution from the Monaco Defendants related to the unjust enrichment they received in
21 connection with approximately \$7.4 million transferred by USACM to real estate development
22 projects in which the Monaco Defendants held direct or indirect equity interests. The USACM
23 Trust's litigation counsel, Diamond McCarthy LLP, has aggressively pursued the USACM Trust's
24 claim for unjust enrichment.

25
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¹ Unless otherwise defined herein, capitalized terms are used as defined in the Motion.


1 5. Following a series of discussions through our respective counsel, the Parties
2 reached an agreement to resolve the Adversary Proceeding as against the Monaco Defendants
3 subject to the execution of a settlement agreement that is approved by the Bankruptcy Court.

4 6. As discussed in the Motion, I believe the Settlement Agreement represents a fair
5 and reasonable compromise of the Adversary Proceeding that will result in a significant benefit to
6 the beneficiaries of the USACM Trust. If the proposed settlement it is not approved by this Court,
7 the USACM Trust will be required to incur significant additional expenses to pursue the
8 Adversary Proceeding against the Monaco Defendants. The settlement was reached on the eve of
9 the trial between the parties to this settlement. As such, if this settlement is not approved the
10 Trust would have to seek a new trial date and immediately prepare for trial at significant cost to
11 the Trust. Even if the USACM Trust were ultimately successful at trial, there is substantial
12 uncertainty concerning the ability to recover any resulting judgment from the Monaco Defendants.
13

14 7. During settlement discussions, the Monaco Defendants made disclosures, and
15 provided supporting documentation to me regarding their financial condition. The Monaco
16 Defendants have advised that they are not in a financial position to make any settlement involving
17 a cash component, and based on discussions with the Monaco Defendants, I believe that is the
18 case.
19

20 8. The terms of the proposed settlement fall within the reasonable range of likely
21 outcomes of the Adversary Proceeding against the Monaco Defendants and will eliminate
22 litigation risks, costs, and delay associated with trial and a potential appeal. Accordingly, I
23 believe that the benefits gained by resolving the Adversary Proceeding on the terms set forth in
24 the Settlement Agreement exceed any benefit that the USACM Trust would receive in further
25 litigating this matter.
26

I declare under penalty of perjury that the foregoing is true and correct.


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